



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

September 16, 2016

Mr. Dallas Baker, Air Director
Air Division
Office of Pollution Control
Mississippi Department of
Environmental Quality
P.O. Box 2261
Jackson, Mississippi 39225-2261

Dear Mr. Baker:

On August 16, 2016, the Region 4 Office of the U.S. Environmental Protection Agency received the Mississippi Department of Environmental Quality's prehearing proposal responding to the EPA's June 12, 2015, final State Implementation Plan (SIP) call and finding of substantial inadequacy with respect to the treatment of excess emissions during periods of startup, shutdown and malfunction (SSM). The proposal also includes the deletion of Mississippi's Clean Air Interstate Rule provisions and an update to the incorporation by reference of EPA's New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants. We have completed our preliminary review and have enclosed our comments for your consideration.

We look forward to continuing to work with you and your staff. If you have any questions, please contact Ms. Lynorae Benjamin, Chief, Air Regulatory Management Section at (404) 562-9040, or have your staff contact Ms. Tiereny Bell at (404) 562-9088.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Scott Davis", is written over a horizontal line. The signature is stylized with a large initial "R" and a long, sweeping underline.

R. Scott Davis
Chief
Air Planning and Implementation Branch

Enclosure

**The U.S. Environmental Protection Agency Comments on
Mississippi's Prehearing Submittal Addressing the SSM SIP Call**

Rule 1.10 Provisions for Upsets, Startups and Shutdowns, and Unplanned Maintenance

I. Key Comments

1. Please include a redline strikeout that addresses the amended provisions of 11 Miss. Administrative Code, Part. 2, Chapter 1, Rule 1.10 (hereafter 11-2-1 Miss. Code), which was formerly known as APC-S-1, Section 10.
2. 11-2-1 Miss. Code R. 1.10.B describes a procedure whereby the Department may establish alternative emission limits in a permit that, upon SIP approval, apply to a source during startups and shutdowns. Provision R. 1.10.B(1) states, as preface:

Startups and shutdowns are part of normal source operation. Emission limitations apply during startups and shutdowns unless specific emission limitations or work practice standards for startups and shutdowns are defined by an applicable rule, regulation, or permit.

In provision R. 1.10.B(1), as currently drafted, the term “[e]mission limitations” appears to include all applicable requirements (whether from the SIP, federal rules, or permits issued) that limit the emission of air pollutants. The provision provides that, during startups and shutdowns, “specific emission limitations or work practice standards for startups and shutdowns” apply when such are defined by an “applicable rule, regulation, or permit.” The EPA is concerned that this provision appears to provide that an “applicable rule, regulation, or permit” that is not approved into the SIP might contain limitations that apply during startups and shutdowns *in lieu of an applicable SIP limit*. The EPA would like to clarify that applicable SIP limits may not be altered or applied in any way that is not specifically provided for by the SIP itself. Any alternative to a SIP emission limitation during startups and shutdowns must be approved into the SIP on either a source-specific or source category-specific basis. Therefore, provision R. 1.10 must be clear that any emission limitations that exist in an “applicable rule, regulation, or permit” do not apply as SIP emission limitations unless and until they are specifically approved as such into the SIP.
3. 11-2-1 Miss. Code R. 1.10.B(2) describes the conditions under which the Department “will consider establishing” alternative emission limitations for startups and shutdowns. Provision R. 1.10.B(2)(d) provides that source-specific emission limitations or work practice standards for startups and shutdowns must be established in a federally enforceable permit, but it notes that those limitations will be considered “state-only” requirements until they have been adopted into MDEQ’s regulations. The EPA believes it would be confusing and contradictory to establish “state-only” requirements in a “federally enforceable” permit. If Mississippi intends to include alternative emission limitations for startups and shutdowns in a permit before submitting them for SIP approval, the EPA suggests establishing them in a state-only permit. A more straightforward approach, we believe, would entail getting the alternative emission limitations approved into the SIP *prior to* including them in a federally enforceable permit

In addition, as a small point of clarification, we recommend that references to “this regulation”

appearing under paragraphs (d) and (e) be replaced with more specific reference, such as to 11 Miss. Admin. Code Pt. 2, Ch. 1.

II. General Comments

1. 11-2-1 Miss. Code R. 1.10.A and C describe the inherent enforcement discretion of the Commission to determine enforcement action against a source for “noncompliance with an emission standard or other requirement of an applicable rule, regulation, or permit” resulting from an upset or unplanned maintenance. As part of the Final SSM SIP Call, the EPA addressed state-only enforcement discretion provisions and restated (see page 33981) five criteria recommended for consideration by air agency personnel in determining whether enforcement action is appropriate in the case of excess emissions during a malfunction (applicable as well to excess emissions during an “upset” as defined under 11-2-1 Miss. Code R. 1.2). The EPA notes that state-only enforcement discretion-related rules are not required to be submitted to the EPA for review and inclusion into the SIP. Moreover, to minimize any potential for confusion about the applicability of such provisions, we believe that it is preferable for state-only enforcement discretion provisions to be omitted from SIPs. However, if Mississippi would like to request the EPA’s approval of provisions R. 1.10.A and C into the State’s federally-approved SIP, we recommend adding language to make clear that the provision applies to the state’s exercise of its own enforcement discretion and does not in any way bar enforcement by the EPA or by other parties in federal court through a citizen suit.

In addition, we note that the word “that” appears unnecessary in paragraphs (a) and (d) of R. 1.10.A and paragraph (d) of R. 1.10.C.

2. According to R. 1.10.B(2)(e), the actual alternative emission limitations would be stated under (e)(i), yet the impression of the “reserved for permit reference” placeholder language is that the SIP-approved rule would merely reference individual permits without also stating the actual limits. Please describe what sort of information Mississippi intends to include as the “permit reference” in 11-2-1 Miss. Code R. 1.10, B.(2)(e)(i).
3. The EPA suggests that, throughout Mississippi’s draft rule, the phrase “emission limitations or work practice standards” be replaced with “alternative emission limitations.”

Rule 1.14 Provisions for the Clean Air Interstate Rule, and Incorporation by Reference Changes

4. As it pertains to the deletion of Mississippi’s Clean Air Interstate Rule provisions and update to the incorporation by reference of the EPA’s New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants, the EPA offers no comments at this time.